

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ZALTON BROOKS,

Plaintiff,

VS.

**HOUSTON COUNTY DETENTION
CENTER, *et al.*,**

Defendants.

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CASE NO. 5:15-CV-408-MTT-MSH

REPORT & RECOMMENDATION

Presently pending before the Court is Defendant Perry's motion to dismiss for failure to exhaust. Defendant Perry adopts the arguments and evidence submitted by Defendants Carson, Gary, Rogers, and Rumph in their motion to dismiss (ECF No. 30) filed on May 16, 2016. Def. Perry's Mot. to Dismiss 1, ECF No. 41. On October 28, 2016, the undersigned filed a Report and Recommendation explaining that Plaintiff failed to exhaust his administrative remedies regarding the claims against Defendants Carson, Gary, Rogers, and Rumph. R. & R. 5-6, ECF No. 40.¹ A failure to exhaust was found at step one of the *Turner* analysis since Plaintiff failed to respond to those Defendants' motion to dismiss. *Id.* at 3-4; *see Turner v. Burnside*, 541 F.3d 1077, 1082 (11th Cir. 2008).

¹ There is a scrivener's error in a quotation on page 5 of the Report and Recommendation identifying Defendant Dale Gary as Defendant "Dale Gale." The October 28 Report and Recommendation is amended to correct any reference to "Defendant Gale" as referring to "Defendant Gary."

Plaintiff similarly failed to respond to Defendant Perry's motion to dismiss. Consequently, for the reasons explained in the October 28 Report and Recommendation, it is recommended that Defendant Perry's motion to dismiss (ECF No. 41) be granted for failure to exhaust. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 14th day of December, 2016.

S/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE